

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JASON R. BENDER,)	
)	
Plaintiff,)	
)	
v.)	C.A. NO.
)	
CORPORAL STEVEN ROBERTSON,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT

Plaintiff, Jason R. Bender (“Plaintiff”), by and through his undersigned attorneys, brings this Complaint against the Defendant and in support thereof, alleges as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. Section 1983 and the Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. Section 1331 and 1343(a)(3) and the aforementioned statutory and constitutional provisions. Supplemental jurisdiction to consider state law claims is founded on 28 U.S.C. Section 1367.

2. Venue is appropriate in the District of Delaware pursuant to 28 U.S.C. Section 1391(b), as it is the judicial district in which the claims asserted arose and because all parties reside in this district.

PARTIES

3. Plaintiff, Jason R. Bender, an adult individual residing at 898 Piney Crest, Millsboro, Delaware, is and was at all times material hereto a resident and citizen of the United States of America and a resident and citizen of the State of Delaware.

4. Defendant Officer Corporal Steven Robertson (“Defendant”) is now and was at all times relevant herein a duly appointed Delaware State Trooper stationed in Troop 7 acting within the course and scope of his employment, under color of state law and pursuant to his authority as a Delaware State Trooper. He is sued in his individual capacity.

FACTS

5. On the evening of January 16, 2005, Defendant was dispatched to a domestic violence call involving a subject being injured by a white Cadillac.

6. En route to the domestic violence call, Defendant saw two vehicles traveling in the opposite direction. The lead vehicle initially appeared to be of a color and type similar to the white Cadillac involved in the domestic violence call. Defendant turned to follow the two vehicles. The second vehicle, a blue GEO Prizm, was driven by the Plaintiff. Defendant passed the blue GEO and proceeded to pursue the lead car. Defendant stopped the lead car, discovering that the car was not the white Cadillac but was instead a grey Oldsmobile with New Jersey tags driven by a white female.

7. The Plaintiff approached the scene where the Defendant had the grey Oldsmobile stopped on the side of the road. The Defendant attempted to signal the Plaintiff to pull over. Plaintiff did not see the Defendant. Plaintiff proceeded to drive by the scene at less than 30 miles per hour.

8. After the Plaintiff drove by, the Defendant, (1) unaware of the identity of the driver; (2) whether there were or were not any other occupants in the vehicle; and (3) without knowledge of any crime committed by Plaintiff, turned and fired his weapon toward the back of the Plaintiff’s vehicle’s rear window. A bullet skimmed the top of the Plaintiff’s trunk, skipped through the back window, and shattered the glass. The bullet jacket separated from the bullet core and exited through

the right side glass. The bullet core entered the headliner of the car just above the driver's seat headrest.

9. In his interview with a Delaware State Police investigator hours after the incident, Defendant first stated that he shot at the Plaintiff because he was in fear for his life. Later in that same interview, the Defendant stated that he shot at the vehicle and driver after it had already passed him because he was afraid that the Plaintiff would hurt someone else and that he just did not think the Plaintiff was going to stop.

10. Plaintiff, thinking that he may have just been shot at but uncertain as to why, continued to drive away after being fired upon. Defendant then returned to his police car and pursued the Plaintiff. Within two miles from the scene of the shooting, after realizing that he was being pursued, the Plaintiff voluntarily pulled over.

11. Upon stopping, Plaintiff exited his vehicle at which time Defendant, shouting profanities, proceeded to physically and verbally assault Plaintiff, with malice and wanton disregard for his rights.

12. Other officers arrived at the scene and handcuffed the Plaintiff. Plaintiff was taken to the hospital by ambulance and treated for facial bruising, swelling, and a broken nose. As a result of the force of his punches to the Plaintiff's face, the Defendant broke the ring finger on his right hand and bruised his elbow. Defendant suffered no other injuries as a result of making the arrest.

13. Several hours later Plaintiff was arrested and charged with eleven offenses including resisting arrest, driving under the influence, and failure to obey a police officer. Plaintiff pled guilty to driving under the influence. The State of Delaware entered a nolle pro se qui on all remaining charges including resisting arrest.

COUNT I
CIVIL RIGHTS VIOLATIONS

14. Plaintiff incorporates hereto paragraphs 1 - 13 as if specifically set forth herein.

15. The above-described actions by the Defendant in effectuating a traffic stop with use of force that was unreasonable, excessive, willful and malicious and without provocation or justification constitute violations of Plaintiff's clearly established rights under the Fourth and Fourteenth Amendments.

16. As a direct and proximate result of the Defendant's actions, the Plaintiff has suffered and will continue to suffer, pain, fear, and humiliation.

COUNT II
ASSAULT AND BATTERY

17. Plaintiff incorporates hereto paragraphs 1 - 16 as if specifically set forth herein.

18. The Defendant willfully, intentionally and maliciously inflicted assaults and batteries upon Plaintiff causing him the damages described above.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory and punitive damages in an amount to be determined at trial, plus attorneys' fees and costs.

SMITH, KATZENSTEIN & FURLOW LLP

A handwritten signature in black ink, appearing to read 'Laurence V. Cronin', is written over a horizontal line.

Laurence V. Cronin (#2385)

Etta R. Wolfe (#4164)

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and

BRADY, RICHARDSON, BEAUREGARD &
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Attorneys for Jason R. Bender

December 19, 2006

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Bender, Jason R.

(b) County of Residence of First Listed Plaintiff Sussex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Smith, Katzenstein & Furlow LLP
P.O. Box 410, Wilmington, DE 19899
302-652-8400

DEFENDANTS

Robertson, Steven, Corporal

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☒ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

use of unreasonable force

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12-19-06

SIGNATURE OF ATTORNEY OF RECORD

Etha R. Wolfe

Etha R. Wolfe (ID 4164)

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No.

06 - - 772

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

DEC 19 2006

(Date forms issued)

David C. Martin

(Signature of Party or their Representative)

David C. Martin

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action